Abdul Hamid bin Ahmad Halim v Suruhanjaya Pilihanraya, Malaysia

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO 21–18 OF 2001
MOHD HISHAMUDIN J
12 OCTOBER 2001

Election *— Offences — Failure to deposit with State Election officer a return of election expenses — Application for authorized excuse — Failure to deposit return due to plaintiff's inadvertence — Whether inadvertence was acceptable reason under s 30(1)(b) of Election Offences Act 1950 — Whether lack of good faith in failure to deposit return within prescribed period*

This was an application by the plaintiff for an authorized excuse under s 30(1)(b) of the Election Offences Act 1950 ('the Act'). The plaintiff was the election agent at the last general election for a candidate for the State seat of Puchong. The plaintiff had failed to comply with s 23(1) of the Act, which required the plaintiff, being an election agent, to deposit with the State Election officer a return respecting election expenses within 31 days from the date of the publication in the Gazette of the results of the general election. Section 30 of the Act provided that where an election agent failed to comply with s 23(1) of the Act, he may apply to a High Court judge for an 'authorized excuse' which, if granted by the court, would permit the election agent to submit the return outside the prescribed period.

Held, dismissing the plaintiff's application:

(1) Based on s 30 of the Act, the plaintiff was required to explain to the judge the reason for the failure to deposit the return. Subject to the production of evidence to the court's satisfaction, the acceptable grounds for such failure were set out in s 30(1)(b) of the Act. As such, the plaintiff had to satisfy the court that his failure to deposit the return was due to any one or more of the grounds specified therein. In addition thereto, the plaintiff was also required to satisfy the court with evidence that the failure to submit the return was 'not by reason of any want of good faith' on his part (see pp 14F–G, I–15A).

(2) In the plaintiff's supporting affidavit, only one ground was advanced for the failure to deposit the return, that is, inadvertence on the part of the plaintiff and according to s 30(1)(b) of the Act, inadvertence on the part of the election agent was an acceptable reason (see pp 18I–19A).

(3) Notwithstanding that inadvertence on the part of the election agent was an acceptable reason, the onus was on the plaintiff to adduce evidence to satisfy the court that his failure to deposit the return within the prescribed period was not by reason of any want

of good faith on his part. On the facts, the plaintiff failed to discharge this burden because, firstly, the plaintiff did not appear to be at all bothered to know or find out the date of the publication in the Gazette of the results of the general election. Secondly, the instant application was made more than one year after the expiry of the prescribed period and thirdly, despite the leniency given by the Election Commission to enable the plaintiff to make the application for the 'authorized excuse' within one month from the date of receipt of the Election Commission's letter, yet no legal action was taken by the plaintiff to file to present application until three months thereafter (see p 20A–B, F–H).

[Bahasa Malaysia summary

Ini adalah suatu permohonan oleh plaintif untuk satu 'authorized excuse' di bawah s 30(1)(b) Akta Kesalahan-Kesalahan Pilihanraya 1950 ('Akta tersebut'). Plaintif adalah ejen pilihanraya pada pilihanraya yang lalu untuk seorang calon bagi kerusi Negeri di Puchong. Plaintif telah gagal mematuhi s 23(1) Akta tersebut, yang memerlukan plaintif, sebarang ejen pilihanraya untuk mendepositkan dengan Pegawai Pilihanraya Negeri suatu penyata berkaitan perbelanjaan pilihanraya dalam tempoh 31 hari daripada tarikh penerbitan keputusan pilihanraya di dalam Warta. Seksyen 30 Akta tersebut memperuntukan bahawa di mana seseorang ejen pilihanraya gagal untuk mematuhi s 23(1) Akta tersebut, beliau boleh memohon kepada hakim Mahkamah Tinggi untuk satu 'authorized excuse' yang mana, jika diberikan oleh mahkamah, akan membenarkan ejen pilihanraya tersebut untuk mengemukakan penyata tersebut di luar tempoh masa yang telah ditetapkan.

Diputuskan, menolak permohonan plaintif:

(1) Berdasarkan s 30 Akta tersebut, plaintif haruslah menerangkan kepada hakim alasan bagi kegagalan untuk mendepositkan penyata tersebut. Tertakluk kepada pengemukaan keterangan yang memuaskan mahkamah, alasan-alasan yang boleh diterima bagi kegagalan yang sedemikian adalah dibentangkan dalam s 30(1)(b) Akta tersebut. Oleh yang demikian, plaintif haruslah memuaskan mahkamah bahawa kegagalan beliau untuk mendepositkan penyata tersebut adalah disebabkan oleh mana-mana satu atau lebih dari alasan yang ditetapkan dalam s 30. Tambahan pula plaintif juga dikehendaki untuk memuaskan mahkamah dengan keterangan bahawa kegagalan untuk mengemukakan penyata tersebut adalah 'not by reason of any want of good faith' oleh beliau (lihat ms 14F–G, I–15A).

(2) Dalam afidavit sokongan plaintif, hanya satu alasan sahaja yang dibentangkan bagi menerangkan sebab kegagalan untuk mendepositkan penyata tersebut, iaitu, kelalaian di pihak

plaintif dan menurut s 30(1)(b) Akta tersebut, kelalaian di pihak ejen pilihanraya adalah alasan yang boleh diterima (lihat ms 18I–19A).

(3) Meskipun kelalaian di pihak ejen pilihanraya merupakan alasan yang boleh diterima, bebanan adalah pada plaintif untuk mengemukakan keterangan bagi memuaskan mahkamah bahawa kegagalan beliau untuk mendepositkan penyata tersebut di dalam tempoh masa yang ditetapkan bukannya disebabkan oleh ketiadaan niat baik di pihak beliau. Berdasarkan fakta-fakta tersebut, plaintif telah gagal melaksanakan bebanan beliau kerana, pertamanya, plaintif nampaknya tidak peduli langsung untuk mengetahui atau menanyakan tarikh penerbitan keputusan pilihanraya tersebut di dalam Warta. Keduanya, permohonan semasa telah dibuat lebih dari satu tahun selepas perluputan tempoh yang ditetapkan dan ketiganya, meskipun kelonggaran telah diberikan oleh Suruhanjaya Pilihanraya bagi membolehkan plaintif untuk membuat permohonan bagi mendapatkan 'authorized excuse' dalam tempoh satu bulan daripada tarikh penerimaan surat Suruhanjaya Pilihanraya, namun tiada tindakan undang-undang diambil oleh plaintif untuk memfailkan permohonan semasa hingga tiga bulan selepas itu (lihat ms 20A–B, F–H).]

Notes

For election offences, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1517–1519.

Legislation referred to

Election Offences Act 1954 ss 23, 27, 30

Razimah Abdul Rahim (*Umar Baki & Co*) for the plaintiff.

Mohd Hishamudin J: By way of originating summons, the plaintiff, En Abdul Hamid bin Abdul Halim, an election agent at the last general election for a candidate, one Dato' Hj Mohamad Satim bin Diman, for the State seat of Puchong N 29, State of Selangor, applies for an 'authorized excuse' under limb (b) of sub-s (1) of s 30 of the Election Offences Act 1954 ('the Act').

This application has been served on the defendant, the Election Commission, at its Selangor office, Shah Alam; and the affidavit of service is at encl 6.

The defendant did not file any affidavit; nor did anyone appear on its behalf at the date of hearing of this application.

Under sub-s (1) of s 23 of the Act, the plaintiff, being an election agent of an election candidate of the 1999 general election, is required to deposit with the State Election Officer a return respecting election expenses within

30 days of the date of the publication in the Gazette of the result of the general election. He has failed to comply with this requirement. A

Section 23 of the Act stipulates:

Return and declaration respecting election expenses

(1) Within thirty one days after the date of publication of the result of an election in the *Gazette* the election agent of every candidate at that election shall deposit with the State Elections Officer a true return, in this Act referred to as the 'return respecting election expenses,' in Form B in the First Schedule, containing detailed statements as respects that candidate of: B

(a) (Repealed); C

(b) (Repealed);

(c) the disputed claims so far as the election agent is aware;

(d) all unpaid claims, if any, of which the election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the High Court; D

(e) all money, securities and other valuable consideration received by or promised to the election agent from or by any candidate or any other person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom such sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise; E

(f) the amount of expenses, if any, incurred by any person authorized by the election agent under subsection 15A (1). F

(2) The return respecting election expenses shall be signed by the election agent and shall be accompanied by a statement made by the candidate and his election agent which shall be respectively in Forms C and D in the First Schedule and shall be on oath before the chairman or a member of the Election Commission, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, or the State Elections Officer: G

Provided that where the candidate has named himself as election agent under subsection 12 (2) such statement shall be made only in Form C of the First Schedule.

(3) If the said return and statements are not transmitted before the expiration of the time limited for the purpose, the candidate shall not after the expiration of such time sit or vote until either such return and statements have been transmitted or until the date of the allowance of such authorized excuse for failure to transmit the same as in this Act mentioned and if he sits or votes in contravention of this Act he shall be liable on conviction, to a penalty of five hundred ringgit for every day on which he so sits or votes. H I

(4) If any candidate or election agent fails to comply with the requirements of sub-s (1) or (2) he shall be guilty of an illegal practice and this

section shall be in addition to and not in derogation of the provisions of s 11.

It will be noted that under sub-s (4) of the above provision, failure to comply with the above requirement by the election agent is an offence on his part, punishable under s 27; and in addition, by reason of sub-s (3), the election agent's candidate would be subjected to certain legal disabilities.

The supporting affidavit of the plaintiff does not state when the result was published in the Gazette, but my research on the Government Gazette reveals that the result of the last (1999) general election was published in the Gazette on 20 January 2000 vide PU (B) 28/2000.

Now, under s 30 of the Act, it is provided that where the election agent has failed to deposit the return within the prescribed period, he may apply to a High Court judge for an 'authorized excuse' which, if granted by the court, would permit him to submit the return outside the prescribed period in the manner as prescribed by sub-s (2) and (3) of that section. Section 30 states:

> Authorized excuse for non-compliance with provisions as to return and declaration respecting election expenses
>
> (1) Where the return and statements respecting election expenses of a candidate at an election have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then—
>
> (a) if the candidate applies to an Election Judge or a judge of the High Court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, negligence or misconduct of his election agent or of any clerk or officer of such agent, or by reason of inadvertence or any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or
>
> (b) if the election agent of the candidate applies to an Election Judge or a judge of the High Court and shows that the failure to transmit the return and statements which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death, illness, negligence or misconduct of any prior election agent of the candidate, or of the absence, death, illness or misconduct of any clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the judge may, after such notice of the application, and on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as to the judge seems fit, and after giving the other candidates, the State Elections Officer and any elector within the constituency or electoral ward and opportunity of being heard, make such order for allowing an authorized excuse for

the failure to transmit such return and statements, or for an error or false statement in such return and statements, as to the judge seems just.

(2) Where it appears to the judge that any person being or having been election agent has refused or failed to make such return or supply such particulars as will enable the candidate and his election agent, respectively, to comply with the provisions of this Act as to the return and statements respecting election expenses, the judge before making an order allowing the excuse as in this section mentioned shall order such person to attend before the judge, and shall, unless he attends and shows cause to the contrary, order him to make the return and statements, or to deliver a statement of the particulars required to be contained in the return, as to the Judge seems just, and to make or deliver the same within such time and to such person and in such manner as the judge may direct, or may order him to be examined with respect to such particulars, and, in default of compliance with any such order, such person shall be guilty of an illegal practice.

(3) The order may make the allowance conditional upon the making of the return and statements in a modified form or within an extended time, and upon the compliance with such other terms as to the judge seems best calculated for carrying into effect the objects of this Act, and an order allowing an authorized excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the judge that any Act or omission of the election agent in relation to the return and statements respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the judge shall relieve the candidate from the consequences of such Act or omission on the part of his election agent.

(4) The date of the order, or, if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

It will be observed that the above s 30 requires the plaintiff to explain to the judge the reason for the failure to deposit the return and, subject to the production of evidence to the court's satisfaction, limb (b) of sub-s (1) of the said section sets out the acceptable grounds as follows:

(a) that the failure was due to the plaintiff's illness;

(b) that the failure was due to death, illness, negligence or misconduct of a prior election agent of the candidate;

(c) that the failure was due to the absence, death, illness or misconduct of any of the plaintiff's clerk or officer;

(d) that the failure was due to inadvertence on the part of plaintiff; or

(e) that the failure was due to any reasonable cause of a like nature.

The plaintiff needs to satisfy the court of any one (or more, if he so prefers) of the above grounds. However, in addition, the plaintiff must also satisfy

A the judge with evidence that the failure to submit the return was 'not by reason of any want of good faith' on his part. It will be observed that the reference to 'good faith' is made twice in sub-s (1) as follows:

> ... and not by reason of any want of good faith on the part of the applicant, the judge may, after such notice of the application, and on production of such
B evidence of the grounds stated in the application and of the good faith of the application, ...

The question arises: has the plaintiff, in his explanation, succeeded in satisfying the court of the existence of at least one of the above stipulated grounds (a) to (e), and that the failure was not due to any want of good faith
C on his part? Let us consider his affidavit. In his supporting affidavit, he states as follows:

AFFIDAVIT

Saya, Abdul Hamid bin Abdul Halim (No K/P: 530610-08-6517) seorang warganegara Malaysia yang cukup umur dan mempunyai alamat di Lot 123, Lorong Aman 4, Kg Seri Aman, Bt 13 Jalan Klang, 47100 Puchong, Selangor
D Darul Ehsan dengan sesungguhnya berikrar dan menyatakan seperti berikut:

1 Saya adalah plaintif di dalam tindakan ini dan segala fakta-fakta yang saya nyatakan di sini adalah di dalam pengetahuan peribadi saya dan daripada dokumen-dokumen yang saya mempunyai akses kecuali yang dinyatakan sebaliknya.

E 2 Saya adalah ejen pilihanraya bagi Dato' Hj Mohamad Satim bin Diman iaitu calon pilihanraya dalam bahagian/kawasan pilihanraya N29 Puchong.

3 Saya sesungguhnya memaklumkan kepada Mahkamah bahawa Dato' Hj Mohamad Satim telah pada 15 November 2000 menerima sesalinan surat bertarikh 13 November 2000 dari Pejabat Pilihanraya Negeri
F Selangor berkenaan dengan penyerahan penyata belanjawan pilihanraya Borang 'B' mengikut s 23 Akta Kesalahan Pilihanraya 1954 (selepas ini dirujuk sebagai 'Borang tersebut') dan beliau perlu mendapatkan 'authorized excuse' dari Mahkamah oleh kerana beliau gagal mengemukakan Borang tersebut di dalam tempoh yang ditetapkan. Saya lampirkan di sini sesalinan surat tersebut sebagai ekshibit dan ditandakan
G sebagai eksh 'P-l'.

4 Saya telah pada 20 November 2000 menyediakan Borang B seperti tersebut di atas. Saya lampirkan di sini sesalinan Borang tersebut sebagai ekshibit dan ditandakan sebagai eksh 'P-2'.

5 Saya bersama Dato' Hj Mohamad Satim telah pada 20 November 2000 berjumpa dengan Tuan Haji Kamaludin bin Sulaiman iaitu pesuruhjaya
H sumpah dan mengisi Borang D di hadapan beliau. Sesalinan Borang D tersebut dilampirkan di sini dan ditandakan sebagai eksh 'P-3'.

6 Saya telah pada 5 Disember 2000 mengemukakan Borang B seperti tersebut di atas kepada Pejabat Pilihanraya Negeri Selangor melalui surat oleh Dato' Hj Mohamad Satim bertarikh 20 November 2000. Sesalinan surat tersebut dilampirkan di sini dan ditandakan sebagai eksh 'P-4'.

I 7 Saya sesungguhnya ingin memaklumkan kepada mahkamah bahawa Dato' Hj Mohamad Satim, atau saya sebagai ejennya, tidak menerima surat dari Pejabat Pilihanraya Negeri Selangor bertarikh 12 Oktober

2000 yang menyatakan tentang tempoh penyerahan penyata perbelanjaan pilihanraya sehingga saya memohon difakskan kepada saya pada 15 Januari 2001 dan menerima faks tersebut pada hari yang sama. Saya lampirkan di sini sesalinan surat berkenaan sebagai ekshibit dan ditandakan sebagai eksh 'P-5'.

8 Saya juga ingin memaklumkan bahawa saya tiada pengetahuan langsung tentang tarikh keputusan pilihanraya diwartakan. Saya dengan tidak sengaja telah gagal menghantar Borang tersebut oleh kerana saya tidak menerima apa-apa notis tentang bila keputusan pilihanraya diwartakan sehinggalah Dato' Hj Mohamad Satim menerima surat dari Pejabat Pilihanraya Negeri Selangor bertarikh 13 November 2000.

9 Saya juga ingin memaklumkan bahawa keadaan politik selepas pilihanraya 1999 sangat gawat maka terlalu banyak urusan-urusan yang perlu saya selesaikan sehingga saya terlupa langsung membuat penyerahan penyata belanjawan sehinggalah saya menerima surat dari Pejabat Pilihanraya Negeri Selangor bertarikh 13 November 2000 pada 15 November 2000.

10 Saya juga ingin memaklumkan bahawa saya tiada niat untuk ingkar kepada peruntukan Undang-Undang Pilihanraya mahupun Perlembagaan Persekutuan.

11 Oleh yang demikian, dengan rendah diri, saya memohon kepada mahkamah yang mulia ini perintah seperti yang dipohon.

Briefly, the explanation given by the plaintiff in the affidavit is that the failure was due to inadvertence on his part; that he was not aware of the date of the publication in the Gazette of the results of the general election; that he did not receive the first letter of reminder dated 12 October 2000 sent by the Election Commission; that he received the second letter of reminder by the Election Commission of 13 November 2000 on 15 November 2000; that on 20 November 2000, he and the candidate completed Form D in front of a Commissioner of Oath; that he and the candidate submitted to the Election Commission Form B on 5 December 2000; and that due to the tensed political situation following the 1999 general election, he had to settle many matters after the election, as a result of which he completely forgot to submit the return.

It will be noted that in his affidavit, he refers to two letters of reminder sent to the candidate Dato' Mohamad Satiman by the Election Commission, exhs P1 (the letter of 13 November 2000) and P5 (the earlier letter of 12 October 2000).

The first letter (exh P5) reads:

Ruj Tuan:
Ruj Kami: PPR(S)PP/11 Jld 2 (31)

Tarikh: 12 Oktober 2000

YB Dato' Mohd Satim bin Diman (N29 – Pucung)
No 474 Jalan 18/5
Taman Sri Serdang
43300 Sri Kembangan
Selangor Darul Ehsan.

YB Dato'/YB Tuan,

Penyerahan Penyata Perbelanjaan Pilihanraya Umum Negeri Kali ke-10

Adalah saya dengan segala hormatnya merujuk kepada perkara tersebut di atas.

2 Sukacita dimaklumkan bahawa pihak YB Dato'/YB Tuan masih belum lagi menghantar penyata perbelanjaan dalam pilihanraya umum yang telah diadakan pada 26 November 1999 yang lalu. Memandangkan tempoh penghantaran penyata perbelanjaan tersebut telah pun tamat dan perwartaan telah pun dibuat mengenainya, maka pihak YB Dato'/YB Tuan dipohon untuk mendapatkan 'excuse authorize' daripada pihak mahkamah untuk tujuan perwartaan.

3 Untuk makluman YB Dato'/YB Tuan, berdasarkan Perlembagaan Persekutuan 'Fasal 48(1)(d)' di atas kegagalan tindakan pihak YB Dato/YB Tuan untuk mendapatkan 'excuse authorize' menyebabkan pihak YB Dato/YB Tuan tidak akan dibenarkan untuk bertanding di mana-mana bahagian pilihanraya umum dan pilihanraya kecil dimasa akan datang.

4 Di atas kerjasama daripada pihak YB Dato/YB Tuan di dalam perkara ini amatlah dialu-alukan.

Sekian, terima kasih.

'Berkhidmat Untuk Negara'

Saya yang menurut perintah,

Sgd
(Abdullah bin Ab Rahman)
Pegawai Pilihanraya Negeri
Selangor, Darul Ehsan.

sk
Tuan Haji Abdul Salim bin Abd Rahman
b/p Setiausaha
Suruhanjaya Pilihanraya Malaysia.

And the second letter (exh P1) reads:

Ruj Tuan:
Ruj Kami: PPR(S)PP/11 Jld 2 (34)

Tarikh: 13 November 2000

YB Dato' Mohd Satim Bin Diman (N29–Pucung)
No 474 Jalan 18/5
Taman Sri Serdang
Selangor Darul Ehsan.

YB Dato',

Kegagalan Menghantar Penyata Perbelanjaan
Pilihanraya Umum Parlimen Yang Ke 10 (1999)
Di bawah Sek 24 Akta Kesalahan Pilihanraya 1954

Adalah saya dengan segala hormatnya merujuk kepada surat Bil (30) dalam siri yang sama bertarikh 12 Oktober 2000 mengenai perkara yang tersebut di atas.

2 Mengikut rekod Pejabat Pilihanraya Negeri Selangor, pihak YB Dato' telah menjadi calon di dalam pilihanraya umum Parlimen yang ke-10. Sungguhpun begitu, sehingga ke hari ini, pihak YB Dato' masih belum mengemukakan penyata perbelanjaan pilihanraya tersebut mengikut kehendak s 23 Akta Kesalahan Pilihanraya 1954. Kegagalan YB Dato' mengemukakan penyata perbelanjaan tersebut menyalahi s 27 undang-undang yang sama. Jika YB Dato' disabitkan dengan kesalahan tersebut, YB Dato' boleh:

(a) Didenda sebanyak RM500

(b) Nama YB Dato' tidak akan disenaraikan sebagai pemilih

(c) Tidak boleh mengundi dalam sesuatu pilihanraya sehingga tamat lima tahun dari tarikh kesabitan tersebut.

(d) YB Dato' juga tidak akan dibenar bertanding sebagai calon dalam tempoh tersebut sebab hilang kelayakan di bawah Perlembagaan Persekutuan kerana gagal mengemukakan penyata perbelanjaan pilihanraya 1999.

3 Sebelum Suruhanjaya Pilihanraya mengambil tindakan undang-undang terhadap kegagalan YB Dato, seperti di para 2 di atas, pihak pejabat Pilihanraya Negeri Selangor ini ingin memberi peluang kepada YB Dato' di dalam tempoh satu bulan dari tarikh menerima surat ini memohon kepada Mahkamah Tinggi di bawah s 30 Akta Kesalahan Pilihanraya 1954 untuk mendapat 'AUTHORIZED EXCUSE'.

4 Jika pihak YB Dato' masih gagal memohon di bawah s 30 Akta Kesalahan Pilihanraya 1954 dan mengemukakan penyata dalam tempoh sebulan yang telah ditetapkan, pentadbiran ini tidak akan teragak-agak untuk mengambil tindakan mahkamah terhadap YB Dato' kerana gagal mengemukakan penyata perbelanjaan pilihanraya seperti dikehendaki oleh s 23 dan dibaca bersama di bawah s 27 Akta Kesalahan Pilihanraya 1954.

5 Bersama-sama ini, disertakan salinan ss 23, 24, 27 dan 30 Akta Kesalahan Pilihanraya 1954 berkaitan dengan perkara di atas untuk rujukan tuan.

6 Disertakan bersama surat ini akuan penerima yang mesti ditandatangani oleh tuan dan borang ini hendaklah dikembalikan ke pejabat ini dengan segera.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'

'Adil, Cekap dan Telus'

Saya yang menurut perintah,

sgd
(Abdullah bin Ab Rahman)
Pegawai Pilihanraya Negeri
Selangor Darul Ehsan.

sk
Ybhg Dato' Setiausaha
Suruhanjaya Pilihanraya Malaysia
Kuala Lumpur.

[Sila abaikan surat ini sekiranya tindakan telah diambil.]

From the affidavits, it would appear that only one ground is advanced: inadvertence on the part of the plaintiff. According to limb (b) of sub-s (1)

of s 30, inadvertence on the part of the election agent is an acceptable reason.

Before I proceed further, I wish to make the following remarks. First, bearing in mind that the results of the 1999 general election were published in the Gazette on 20 January 2000 and that the plaintiff was required to submit the return within 30 days of the date of the publication of the Gazette, there has been a very long delay in making the present application to this court. The present application was only filed on 15 March 2001, meaning that it was filed more than a year after the due date for depositing the return.

Second, under the law, the Election Commission is under no legal obligation to send any reminder either to the plaintiff, as the election agent, or to the candidate. The two reminders sent to the candidate were on the Commission's own initiative.

Third, accepting that the candidate never received the first reminder, it is clear that neither the plaintiff nor the candidate, despite the leniency shown to them by the Commission, took the second reminder seriously. For, in spite of the fact that it was made clear by the Commission in their second letter that the plaintiff must obtain the authorized excuse from the court and to submit the return within 30 days of the receipt of the letter (the second letter was received by the candidate and the plaintiff on 15 November 2000), the plaintiff filed the present application seeking the 'authorized excuse' only on 15 March 2001, thus a delay of about three months. No explanation is given whatsoever for this delay.

Fourth, it appears from the affidavit that after receipt of the second letter, the plaintiff and the candidate, purportedly in compliance with s 23, went to the office of the Election Commission on 5 December 2000 to submit Form B. Now, as the plaintiff was out of time, he could not deposit the return unless and until he first obtained the authorized excuse from the court. Even assuming that he could so deposit, it appears that he had not complied strictly with the requirements of sub-s (2) of s 23. For although the plaintiff stated in his affidavit that he and the candidate went to the office of a commissioner of oath on 20 November 2000 to fill in Form D, yet nothing is said in the affidavit about the submission of the said Form D to the Commission as required by sub-s (2) of s 23 (para 6 of the affidavit only mentions the submission of Form B). Also, significantly, nothing is mentioned about the submission to the Commission of Form C which, like form D, is also required to be submitted together with Form B.

Finally, the reference to the 'very tensed political situation' ('*keadaan politik selepas pilihanraya 1999 sangat gawat*') in para 9 of the affidavit is too vague and devoid of any evidential value.

In my judgment, although under the provision of s 30, inadvertence as an excuse for the failure, is one of the reasons that the court may accept, nevertheless, in the instant case, I do not think that I need to decide whether or not the plaintiff has established a case of inadvertence. For even

assuming that this is a case of inadvertence, I am not inclined to grant the 'authorized excuse'. For the law is clear: before the court can grant the 'authorized excuse', the onus is on the plaintiff to adduce evidence to satisfy this court that the failure to deposit the return within the prescribed period was not by reason of any want of good faith on his part. On the facts, I think the plaintiff failed to discharge this burden. Indeed, on the contrary, the affidavit evidence and the whole circumstances of the case all point to one thing: lack of good faith on the part of the applicant. I shall explain.

First, from the affidavit, it is plain that the plaintiff does not appear to be at all bothered to know or to find out the date of the publication in the Gazette of the results of the general election, either for the purpose of discharging his duty under s 23 of the Act, or for the purpose of making the present application. So much so, I have to research and find out the date myself from the Gazette. Being an election agent, the plaintiff has a duty to find out the date so that he could discharge his duties under s 23 of the Act; and as an applicant in this application, he has a duty to inform this court of such an important date, for the extent of the lateness in making the present application is a crucial factor that this court has to take into account in determining whether or not to allow the application. Everyone has easy access to the Gazette which is published under the authority of the Government for public information. The plaintiff simply cannot just say, as he did in para 8 of his affidavit, that he had no knowledge at all of the date:

> Saya juga ingin memaklumkan bahawa saya tiada pengetahuan langsung tentang tarikh keputusan pilihanraya diwartakan.

Such a statement as this not only goes to show that the plaintiff is an irresponsible election agent, but also betrays his negative attitude towards his duty to this court as an applicant — the duty to make full disclosure of vital information.

Second, this application is made very late. It is made more than a year after the expiry of the prescribed period.

Third, despite the leniency accorded to the plaintiff by the Election Commission, the plaintiff appears to have scant regard of the warning given to the candidate by the Election Commission in its second letter (exh P1). Although the Commission warned the candidate, Dato' Muhamad Satim (and, to my mind, this warning equally applied to the plaintiff, being the election agent) that should he fail to obtain the 'authorized excuse' and to submit the return within one month of the receipt of the reminder, legal action would be taken against him under ss 23 and 27 of the Act, yet no action to file the present action was taken by the plaintiff until three months later.

Accordingly, this application is dismissed.

Although this is not an Election Court, I think, nonetheless, it is appropriate that a copy of this judgment be supplied to the Election Commission by the deputy registrar of this court so that appropriate follow

A up actions could be taken by the Commission as the Commission deems fit in the interests of justice.

Plaintiff's application dismissed.

Reported by Lim Lee Na

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